

FILED
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District Court

AUG 18 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN MARIANA ISLANDS**

13)	Civil Action No.: No. 04-0028
14)	
15)	PLAINTIFF EEOC'S REPLY TO
16)	DEFENDANT'S OPPOSITION TO
17)	MOTION TO QUASH
18)	
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10 **EQUAL EMPLOYMENT**
11 **OPPORTUNITY COMMISSION,**
12
13 **Plaintiff,**
14 **vs.**
15 **MICRO PACIFIC DEVELOPMENT, INC.**
16 **dha SAIPAN GRAND HOTEL,**
17 **Defendant**

18
19 Plaintiff Equal Employment Opportunity Commission files the instant Reply to
20 Defendant's Opposition to the EEOC's Motion to Quash Subpoenas.

21
22 I. Financial Records

23 According to Defendant, the financial records sought are relevant for two reasons: 1)
24 "the Torreses were under extreme financial pressure in 2003 and brought this claim through the
25 EEOC purely to get money to pay creditors and not because the harassment they allege to have

P'S REPLY - MOT TO QUASH
CIVIL ACTION NO. 04-0028

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1 happened actually occurred" [Defendant's Opposition at page 2, lines 3-7.] and, 2) if "Julietta
 2 Torres was borrowing money from Akira Ishikawa, the alleged sexual harasser, at a time when
 3 she alleges the sexual harassment was occurring" this conduct was "not at all consistent with a
 4 victim of sexual harassment and...it makes it hard to believe [Mr.] Ishikawa was harassing
 5 her." [Defendant's Opposition at page 2, lines 7-11.]

6 Defendant's argument that Mrs. Torres complained about sexual harassment in order to
 7 get money to pay creditors is illogical and contradicts Defendant's own investigation of Mrs.
 8 Torres' complaint. Pursuant to Federal Rule of Civil Procedure 30(b)(6), Defendant gave
 9 binding testimony which admitted that the company's investigation of Mrs. Torres complaint
 10 specifically found that she was sexually harassed by Mr. Ishikawa. [Dixon Decl. at para. 3.]
 11 Defense counsel himself confirmed that "[t]he investigation conducted by the hotel concluded
 12 that [Mrs. Torres'] complaint had merit" and that Mrs. Torres herself told the company what
 13 she wanted as a result of her complaint: "Ishikawa not to harass anyone else, she wanted
 14 Ishikawa to apologize and she did not want to work in the same department as Ishikawa."
 15 [Dixon Decl. at para. 4.] For Defendant to now claim that Mrs. Torres' complaint was
 16 motivated by financial distress is, at best, disingenuous.

17 The financial documents sought by Defendant are those of Vincente Torres for the period
 18 of 1999 to the present. Defendant's opposition focuses on "the desperate financial straits of the
 19 Torreses in 2003." [Defendant's Opposition at page 2, line 15, emphasis added.] Remarkably,
 20 Defendant failed to provide any basis for its subpoena of documents other than for the year
 21 2003. Indeed, the time frame of the subpoena extends for years prior to and after 2003 and
 22 Defendant provides no justification for this broad time scope.

23 Defendant's subpoena seeks Mr. Torres' financial information in the years prior to his
 24 marriage to Mrs. Torres on August 23, 2002. [Dixon Decl. at para. 5.] Defendant takes great
 25 pains to discuss Mr. Torres' finances in the 1990's --- which occurred years before their

1 marriage. According to Defendant's tortured logic, Mrs. Torres and her husband possibly
2 "exaggerated" the extent of the harassment to "get money out of the Defendant to pay their
3 debts." This is mere unsupported conjecture on the part of Defendant. Simply stated, Mr.
4 Torres' financial obligations prior to his marriage to Mrs. Torres are completely irrelevant to
5 this case.

6 The scope of the subpoena also includes documents dated after November 2002, the date
7 which Mrs. Torres complained to Defendant's personnel manager about sexual harassment.
8 [Dixon Decl. at para. 6.] Even if the documents sought by Defendant proved that the Torres
9 family was experiencing financial difficulty, it would have no logical relevancy to the claims in
10 this case, despite Defendant's unsupported assertions to the contrary. As noted, Mrs. Torres
11 had already filed her complaint with the company by November 2002, so the Torreses'
12 finances after November 2002 could not have been a factor in Mrs. Torres' motivation to
13 complain. As such, there is no basis for Defendant's subpoena of financial records after Mrs.
14 Torres' November 2002 complaint.

15 With regard to Defendant's outrageous allegations that Mrs. Torres would grab Mr.
16 Ishikawa's crotch and ask for loans or that borrowing money from Mr. Ishikawa somehow
17 illustrates that she was not a victim of harassment Plaintiff must point out the obvious:
18 Defendant has provided no evidentiary basis to support these allegations — not a single page of
19 evidence — not a statement of a witness — nothing. These allegations are simply untrue.
20 Nevertheless, Defendant has failed to explain how the records it has subpoenaed would tend to
21 prove or disprove this supposed conduct on the part of Mrs. Torres. There is no logical
22 connection between the records sought and the allegations that Defendant hopes to prove.

23 Simply stated, Defendant seeks financial records that are far beyond the scope of this
24 lawsuit, are irrelevant to the claims and defenses in this lawsuit and are not reasonably calculated
25 to lead to the discovery of admissible evidence.

1 II Immigration Records

2 Defendant claims that the immigration records sought by the company are needed in
 3 order to determine whether the Torreses were untruthful in completion of these records. In
 4 support of this argument, Defendant cites two cases. The first, *Davidson Pipe Company v.*
 5 *Laventhol and Hoswath* is incorrectly cited as 120 F.R.D. 445 (DC NY 2988). The case at this
 6 citation is *International Digital Systems Corp. vs. Digital Equipment Corp.* This case involves
 7 the inadvertent disclosure of documents protected by the attorney/client privilege; it does not
 8 support Defendant's argument. The actual cite for the case entitled *Davidson Pipe Company v.*
 9 *Laventhol and Hoswath* is 125 FRD 363. *Davidson* concerns jury trial demands; it likewise
 10 does not support Defendant's argument here. [Plaintiff notes that Defendant cited to these
 11 cases during "meet and confer" communications and Plaintiff advised as to the problems
 12 detailed above – apparently to no avail. See Exhibit F to Plaintiff's Moving Brief.] The second
 13 case cited by Defendant is *U.S. v. IBM* 66 F.R.D. 215 (S.D.N.Y.) In *IBM*, the Court allowed
 14 discovery of a witness' financial holdings which would be that would be financially impacted
 15 by the verdict in the case. In allowing the discovery to go forward, the *IBM* Court reasoned
 16 that good cause had not been shown for protection under F.R.C.P 26(c) as the witness did "not
 17 demonstrate that allowing discovery will cause him [or another witness] annoyance,
 18 embarrassment, oppression, or undue burden or expense." *Id.* at 219.

19 As set out in Plaintiff's moving brief, the production of their immigration related
 20 documents would cause the Torreses deep humiliation, annoyance, embarrassment, and
 21 oppression. Moreover, as the Ninth Circuit noted in *Rivera v. Nibco, Inc.*, 364 F.3d 1057 (9th
 22 Cir. 2004), [t]he chilling effect such discovery could have on the bringing of civil rights
 23 actions unacceptably burdens the public interest." *Id.* at 1065. In this public enforcement
 24 action, brought by the EEOC on behalf of the public interest, such concerns are paramount.
 25

1 Defendant's clear objective in requesting immigration records is to harass and
2 intimidate witnesses. Indeed, in withdrawing its subpoena for Renen Ansus' immigration
3 records, Defendant implies prior ignorance regarding Plaintiff's position as to his status as a
4 witness in this lawsuit. In fact, on July 14, 2005, EEOC counsel specifically advised during
5 "meet and confer" communications that Mr. Ansus "has not been named as a potential witness
6 in this suit by the Plaintiff, nor will the EEOC call him as a witness at trial." [Exhibit F to
7 Plaintiff's Moving Brief.] The only clear reason for the request for the immigration records
8 was to harass, intimidate, annoy and embarrass the witnesses.

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10 **III. Conclusion**

11 Defendant's subpoena for records regarding financial records and immigration documents
12 should be quashed.

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14 Dated: August 17, 2005

Respectfully submitted,

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